

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

ANTHONY T. HARRELSON,

Plaintiff,

v.

CIVIL ACTION NO. 5:10-cv-00216

KEVIN CANTERBERRY, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

On March 3, 2010, the Plaintiff filed a *Complaint* (Document No. 1) and an *Application to Proceed Without Prepayment of Fees and Costs* (Document No. 2). On March 8, the Plaintiff filed a *Motion to Dismiss* (Document No. 7). On May 11, 2010, the Plaintiff filed a second *Motion to Dismiss* (Document No. 35).


By *Standing Order* (Document. No. 6) entered on March 3, 2010, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On December 13, 2010, the Magistrate Judge submitted *Proposed Findings and Recommendation* (Document No. 38) wherein it is recommended that this Court: 1) deny the Plaintiff's *Application to Proceed Without Prepayment of Fees and Costs* (Document No. 2); 2) deny the Plaintiff's March 8, 2010 *Motion to Dismiss* (Document No. 7); 3) deny the Plaintiff's May 11, 2010 *Motion to Dismiss* (Document No. 35); and 4) dismiss the Plaintiff's *Complaint* (Document No. 1).

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Plaintiff's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the substance of the findings of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*. The Court further **ADOPTS** the recommendation of the Magistrate Judge and **ORDERS** that: 1) the Plaintiff's *Application to Proceed Without Prepayment of Fees and Costs* (Document No. 2) is **DENIED**; 2) the Plaintiff's March 8, 2010 *Motion to Dismiss* (Document No. 7) is **DENIED**; 3) the Plaintiff's May 11, 2010 *Motion to Dismiss* (Document No. 35) is **DENIED**; and 4) the Plaintiff's *Complaint* (Document No. 1) is **DISMISSED**.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: January 3, 2011


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA

